IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 750 OF 2006

Madhusudan Dattatray Kinlekar ... Petitioner

V/s

Janardan Ramkrishna Masurkar ... Respondent

Mr. Santosh Shetty i/by M/s. M.P. Vashi & Associates for the petitioner.

Mr. R.S. Deshpande with Mr. B.G. Tangsali for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 14TH FEBRUARY, 2006

P.C.:

1. Heard learned counsel for both sides.

2. The petitioner has filed the petition against the order passed by the District Judge, Sindhudurg at Oros, dated 7.12.2005 dismissing the tenant's appeal and confirming the decree passed by the Trial Judge for eviction of the tenant petitioner from the suit property i.e. Block Nos. 1 and 3 from the eastern side of the ground of Municipal House No. E/336, in Sawantwadi.

3. The plaintiff filed the suit for eviction of the petitioner tenant from the suit property on various grounds inter-alia submitting that he was defaulter in payment of arrears of rent and permitted increases and by amendment of the plaint the plaintiff also sought amendment on the ground that there was change in the suit premises from the residential to commercial use and, as such, that was against the provisions of the Bombay Rent Act.

The learned Trial Judge, after hearing both parties and recording their evidence, came to the conclusion that the plaintiff had proved his case and eviction decree came to be passed.

4. The appeal was preferred in the District Court, Sindhudurg at Oros. The learned appellate Court, after hearing both parties, came to the conclusion that there was no bonafide dispute of the rent between the parties and, therefore, plaintiff was not entitled to decree for want of non-payment of permitted increases, however, it was held that the defendant was guilty of change of user of the suit property from residential to commercial one and, as such, on that count the petitioner was directed to be evicted from the suit property and his appeal was

dismissed and decree for eviction came to be confirmed. Hence the present petition.

4. At the outset, it may be noted that so far as the allegations regarding the default in payment of permitted increases and consequent prayer for eviction of the tenant from the suit property was concerned, it was correctly held by the lower appellate Court that the plaintiff was not entitled for decree on that count. However, the story is completely different so far as the change of user of suit property from residential to commercial purpose is concerned. In fact, the record shows that the defendant, in his cross-examination has admitted that he used to prepare Ayurvedic medicines in Block No.1 and he is also running the business there. He is not having ration card at Sawantwadi. His name is not there in the voters' list at Sawantwadi. He is having house at Kudal. His family consisting of his wife, son and mother-in-law are residing in the house at Kudal. His name is there in the ration card and voters' list at Kudal. On the other hand, there was absolutely no evidence to show that the suit property was used for residential purpose by the petitioner.

5. The petitioner had come with a case that he was not

carrying on any business in the suit property. According to him, he obtained V.R.S. and came to reside at Sawantwadi from Vengurla. However, he admits in cross-examination that he came to reside at Sawantwadi in the year 1973 and initially was residing in rented premises in the area known as Holicha Kunth, which shows that thereafter he came into the suit property but did not carry on his business there when he shifted his residence at Kudal subsequently converting the suit property into commercial one.

6. Be that as it may. The perusal of entire evidence on record is sufficient to show that the lower appellate Court has properly appreciated the evidence on record in proper perspective in order to hold that the petitioner is guilty of change of user from residential to commercial purpose and, as such, the decree passed against the petitioner for eviction from the suit property cannot be faulted at all.

7. In the result, I hold that there is no merit in the petition and petition deserves to be dismissed and stands dismissed with no order as to costs.

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